

This pamphlet generally describes the process the Department follows in response to a written complaint. All investigative and enforcement matters, including administrative hearings, are conducted pursuant to provisions of the Arizona Revised Statutes (A.R.S.) and the Arizona Administrative Code ("A.A.C.).

## The Complaint Process

### Starting the Process

To begin an investigation, the Department must determine two things:

1. That the complaint or information relates to possible violations of real estate statutes or rules.
2. That the people and/or entities involved are under the Department's jurisdiction.

Examples include:

- "Licensees" - real estate, cemetery and membership camping salespersons and brokers, real estate schools and instructors (including business entities such as partnerships, corporations, and limited liability companies) which hold or should hold licenses;
- Those who have applied for a license;
- Persons or businesses selling or leasing subdivided or unsubdivided lands, time-share intervals, cemetery property or membership camping contracts.

In many cases, the Department does not have jurisdiction over complaints, such as:

- Regulation of homeowner associations (see A.R.S. § 33-1901, et seq.)
- Disputes between a landlord and tenant (see A.R.S. § 33-1301, et seq.)
- Determining whether a contract is enforceable or legally binding, or whether it may be valid.
- Deciding who is entitled to the earnest money deposit when a deal falls through.

If you file a complaint which involves a matter not within its jurisdiction, the Department will suggest that you:

- Talk with the licensee or broker.

- Consider mediation.
- Talk with another agency which may provide assistance or information, or which may have jurisdiction.
- Talk to someone at the trade association to which the licensee or developer belongs such as a state or local Association of Realtors® or home builder's association.
- Talk with an attorney about what legal rights or potential liability you may have.

The Department's enforcement of real estate license laws does not provide a way for individuals to collect damages for wrongs done to them, except as a last resort through the Real Estate Recovery Fund. The Department is legally prohibited from intervening in commission or contractual disputes. (See A.R.S. § 32-2152(B))

### Communication

The first step in resolving complaints is communication. The Department encourages you to talk to the licensee or developer, and to the licensee's designated broker. By talking with the designated broker or to the owner of the firm before filing a complaint, you may be able to resolve the matter more quickly. The issue can very often be resolved when the parties discuss their respective viewpoints.

If the person involved is a real estate licensee, you may wish to contact the Arizona Association of Realtors. Approximately half of the real estate brokers and salespersons in Arizona are members of an Association of Realtors®. These members subscribe to a "Code of Ethics," a higher standard of conduct than that imposed by law. Trade organizations will refer complaints to the Department if they believe the license laws have been violated.

### Mediation

Mediation is an inexpensive alternative to filing a civil lawsuit. Mediation services are available in most communities in Arizona and

may allow resolutions not otherwise available. Mediation provides an opportunity to find a solution which satisfies both parties, rather than one party "winning" and the other "losing." The Arizona Attorney General's Office, the Arizona Association of Realtors® and numerous others are available to provide mediation services for a relatively small fee. Contact the Real Estate Department, Association of Realtors®, or see "mediation services" listed in your telephone directory.

### Investigation

A.R.S. § 32-2108 requires that complaints filed with the Department be in writing and signed by the complainant. The complaint must allege conduct which violates Department laws or rules. A complaint form is available on request.

If you file a complaint, include your full name and address and that of each person against whom the complaint is made (the "respondent").

The complaint itself should be clear and concise, stating in detail the facts surrounding the incident(s), including:

- The time and place of occurrences;
- Who was involved or present;
- What activities occurred which you believe to be illegal;
- The names, addresses and telephone numbers of any witnesses.

There is no fee charged for filing a complaint, but you will need to make and attach legible copies of all transaction documents and related correspondence.

The complaint will be reviewed and you will be notified as to which Department representative has been assigned to investigate your complaint. Each licensee or developer involved is sent a copy of the complaint and must provide a written response. Each must also attach copies of documents which sup-

port their statements. If additional documents or statements are needed, the Department Investigator will request or subpoena them.

After review by the assigned representative of the information gathered, a determination is made as to whether the Department believes it can prove that the respondent violated one or more real estate laws or Commissioner's Rules. Based upon that determination, the decision is made to:

- Close the file without action.
- Refer the case to the Attorney General's Office for prosecution.
- Negotiate settlement by means of a consent order.
- Refer the matter to mediation in lieu of formal disciplinary action (if the parties agree).

Administrative sanctions are not pursued unless warranted by a preponderance of the evidence.

## Administrative Action

### Administrative Hearing

When the Department believes the evidence to be sufficient, it refers the case to the Attorney General's Office. A Notice of Hearing and Complaint is prepared which the Department then sends to the respondent. This notice identifies which statutes or rules the respondent has allegedly violated, and sets a date and time for hearing.

An administrative law judge is assigned to hear the matter on behalf of the Real Estate Commissioner. These hearings are conducted by the Office of Administrative Hearings in accordance with the Administrative Procedures Act. Hearings are held in Phoenix and are open to the public.

After the hearing, the administrative law judge prepares Findings of Fact and Conclusions of Law. These are sent to the Commissioner with a recommended Order. The Commissioner either adopts, modifies or rejects

the findings and conclusions, and enters a Commissioner's Order.

In issuing an order, the Commissioner may take any one or a combination of actions, which may include the following:

- Dismissal of all charges: No sanctions are imposed upon nor penalties assessed the respondent.
- Revocation (of license, approval or certificate): The individual or entity is not eligible to conduct business activities unless granted a new license at some future date.
- Suspension (of license, sales, approval or certificate): The individual's or entity's license is suspended for a specific period of time or until some condition is met. During this period, the individual is not allowed to conduct business.
- Civil penalty: A respondent may be assessed a civil penalty in an amount not to exceed \$1,000 per violation. Funds collected as a result of a civil penalty are placed in the State's General Fund.
- Issues a provisional license.
- Order developer to offer rescission of sales.

If the individual or entity does not comply with the order, the Commissioner may pursue further administrative sanctions.

**Appeal**

The parties may appeal from the decision if certain procedural requirements are followed.

**Consent Order**

Many cases are resolved by means of a Consent Order instead of a hearing. Similar to a plea agreement, a Consent Order states facts and discipline to which all parties have agreed. The Department's Administrative Actions Director negotiates proposed terms, but the Commissioner has final authority in all such cases. Consent Orders are not subject to administrative review by the courts.

**Mediation**

An alternative to filing a complaint with the Department of Real Estate may be to seek settlement via mediation. You may wish to contact a private mediator or the Arizona Attorney General's Office offers mediation services.

**Publication of Orders**

All formal administrative actions taken against licensees or developers are a matter of public record and are published in the Arizona Real Estate Bulletin.

**Reviewing Files**

Hearing and closed investigation files are available for review. Older files are in storage off-site and must be ordered. If you wish to review a file, contact the Department's Customer Services Division so that the files may be retrieved for your review.

**The Department  
Commissioner and Advisory Board**

The Department is under the direction of the Real Estate Commissioner who is appointed by and serves at the pleasure of the Governor. A nine-member Real Estate Advisory Board is also appointed by the Governor for individual six year terms and provides advice and counsel to the Commissioner. By law, the Advisory Board meets at least once each quarter, but may meet more often.

**The Mission**

The Department's mission is to safeguard and promote the public interest through timely and capable assistance, fair and balanced regulation, and sound and effective education.

**What the Department Does**

Currently, the Department:

- Licenses and regulates the activities of approximately 50,000 Arizona real estate, cemetery and membership campground salespersons and brokers
- Regulates real estate schools; approves and

monitors real estate courses and instructors.

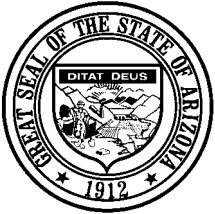
- Inspects subdivisions to determine compliance with representations made to the public and to the Department. Issues subdivision and unsubdivided land public reports, and suspends sales of lots in land developments where promises have not been kept.
- Issues cease and desist orders in matters of unlicensed activity or illegal subdividing.
- Audits brokers' records and their handling of client funds in sales, lease, and property management transactions.
- Investigates every complaint that comes into the Department over which it has jurisdiction.
- Participates in hearings to resolve alleged violations of real estate statutes and rules.
- Administers the Real Estate Recovery Fund.

If, after reading this brochure, you wish to file a complaint against an Arizona real estate licensee or a developer, contact the Arizona Department of Real Estate, Customer Assistance Team, 2910 N. 44th Street, Phoenix AZ, (602) 468-1414, extension 520, and ask for a complaint form. You may download the form from our web site at [www.re.state.az.us](http://www.re.state.az.us). Click on "Download Forms."

This document may be obtained in alternative formats by contacting the Department's Customer Assistance Team at (602) 468-1414, extension 520.

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## A Consumer's Guide to Filing Complaints With the Arizona Department of Real Estate



2910 N. 44th Street  
Phoenix AZ 85018  
(602) 468-1414  
[www.re.state.az.us](http://www.re.state.az.us)

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Reasonable Accommodation Agency